

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO.9589 OF 2004

Between

M.Venkat Rao son of Late M.jagannadham

...PETITINER

vs.

The Senior Divisional Security Commissioner, Railway Protection Force, Valtair
Division, Visakhapatnam and another.

..RESPONDENTS

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO.9589 OF 2004

ORAL ORDER

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Heard Sri J.M.Naidu the learned counsel for the petitioner and Sri G.S.Sanghi the learned counsel for the respondents.

The petitioner assails the initiation of disciplinary inquiry by the issuance of

the charge-sheet dated.29-03-2004 accompanied by a statement of charges and allegations alleging four species of charges against the petitioner, a Sub-Inspector of the Railway Protection Force. By the impugned charge sheet the petitioner has been intimated that one V.Seshadri, Assistant Security Commissioner-ED is appointed as an Inquiry Officer. This paragraph of the charge sheet makes interesting reading and is reproduced accordingly:

“Sri V.Seshadri, ASC.cum ED is nominated as enquiry officer/I will conduct the enquiry myself”

Apparently the 1st respondent-the author of the impugned charge sheet dated 29-03-2004 did not consider it necessary to employ any effort to modify the printed format of a charge sheet to accord with the decision to delegate the function of conducting the inquiry to an inquiry officer as against the other option of himself conducting the inquiry as the disciplinary authority. The printed format of the charge sheet contains both the options. He has retained both. He has merely included the name of V.Seshadri the Assistant Security Commissioner as an inquiry officer in the earlier option format, which is left blank in the format. Such a conduct in a solemn proceedings like a disciplinary inquiry must be considered as vagrant and compulsively indicative of abdication of care and application of mind.

Be that as it may, the petitioner's grievance and contention is that the respondents have proceeded to initiate a disciplinary inquiry against him even without issuing a show-cause notice, receiving his explanation and thereupon arriving at a satisfaction as to whether the circumstances call for initiation of disciplinary inquiry. According to the petitioner's understanding whenever a disciplinary inquiry is to be initiated with the object of eventually imposing a major penalty if the circumstances so warrant, it is imperative that the charged employee must first be given an opportunity communicating the *prima facie* allegations against him, receiving his explanation and thereafter alone determining whether even after the explanation, circumstances exist warranting initiation of an inquiry. This assumption of the petitioner is canvassed on the platform of Rule.153(3) of the Railway Protection Force Rules,1987, Chapter XI whereof deals with discipline and conduct. Rule 153 occurs in Chapter XI. Rule 153(3), on which reliance is placed by the petitioner, reads as under:

“ On receipt of complaint or otherwise, the disciplinary authority on going through the facts alleged or brought out shall decide whether it is a case for major or minor punishment. No attempt shall be made to convert cases punishable under Section 16-A or Sec.17 into disciplinary cases nor divert cases in respect of which major punishments are imposable to the category of cases where minor or petty punishments are imposable.”

Sec.153(2)(i) is also relevant and reads as under:-

“ Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against an enrolled member of the Force, it may itself inquire into, or appoint an Inquiry Officer higher in rank to the enrolled member charged but not below the rank of Inspector, or institute a Court of Inquiry to inquire into the truth thereof.”

On a true and fair construction of the statutory position above, it does not appear to be the legislative intent that prior to the disciplinary authority arriving at the satisfaction or opinion that there exist grounds for inquiring into the truth of any imputation of misbehaviour against an enrolled member of the Force, an opportunity should be provided to such member of the Force, his explanation solicited and thereafter alone the opinion arrived at. In the absence of any such procedural vigour imposed by the statutory rules and there being no such requirement emanating from the mandate of Articles 14,16 and 311 of the Constitution, this Court is not inclined to accept the contention of the petitioner that such a pre inquiry or what could euphemistically be termed a curtain-raiser inquiry is a *sine qua non* for initiation of a regular inquiry. The satisfaction or the opinion arrived at by the disciplinary authority is a decision on the basis of a complaint or other information that comes to the notice of the disciplinary authority and on the basis of which the disciplinary authority forms an opinion. By such exclusive formation of opinion by the disciplinary authority and without the assistance of the charged officer, no prejudice is caused to the charged officer as a full fledged inquiry is to be initiated where a major penalty is the goal. In the event of such regular inquiry, the petitioner has a plenitude of opportunities of rebutting the evidence marshalled against him by the employer or to lead his own evidence in substantiation of whatever defence he desires to put in opposition to the case of the employer. Therefore either on first principles or on the basis of the statutory rules it does not appear to this Court that the employer is required to issue to the petitioner a pre-inquiry show-cause notice, receive his explanation and consider the same

before determining or forming an opinion as to the need or necessity of conducting an inquiry into imputations of misconduct against a charged member of the Railway Protection Force.

Reliance is placed by the petitioner on the decision of a learned single Judge of the Calcutta High Court in **Sanjoy Kumar Singh Vs. Union of India & Ors()** . In the said case the Calcutta High Court was dealing with a challenge to an order of removal from service by a member of the Railway Protection Force. The removed employee had also unsuccessfully pursued a departmental appeal. In the context of assailing the order of removal, the member of the Force had challenged before the Calcutta High Court, several steps in the disciplinary inquiry including the order of removal, commencing from the issuance of a charge sheet and proceeding to the conclusion by the final order and the appellate order. It is in the course of considering such several and distinct challenges to the departmental proceedings that the observations were made in paragraph 12 of the SLR report. As is apparent from the judgment (appearing at paragraph 14 of the SLR Report) the fact of the memorandum of articles of charges itself containing the name of the inquiry officer and the venue and time fixed for inquiry was considered by the Calcutta High Court as an instance of prejudgment of the issue. This was in the context of a specific challenge to the departmental proceedings that the petitioner's guilt was pre judged and the appointment of inquiry officer in the charge sheet itself was illustrative of such prejudgment.

In the case on hand, that is not the allegation. The contention is that the regular inquiry should be proceeded by a show-cause notice issued and explanation solicited from the petitioner and on consideration of which alone an opinion could be found by the disciplinary authority whether a case exists or the circumstances warrant initiation of a disciplinary inquiry. This Court has already analyzed supra that such is not the intendment of the statutory position under Rule 153 of the Railway Protection Force Rules, 1987.

On the aforesaid analysis this Court is unable to accept the contention of the petitioner that the impugned charge sheet is vitiated by transgression of Rule 153 of the Railway Protection Force Rules, 1987.

The conduct of the 1st respondent in signing the printed format of the charge sheet without any application of mind is clearly negligent. Very often it is such

negligent and careless functioning of the discipline authority that leads to aborted inquiries or disciplinary inquiries being set aside, to the detriment of public interest. Officers who have neither the patience nor the care and concern to modify printed formats to suit particular circumstances and in disciplinary inquiries ought not to be entrusted the onerous and delicate function of a disciplinary authority. Such entrustment will subvert the discipline of the administration and eventually public interest as often times it is such callous negligent and laidback approach to disciplinary proceedings that results in the invalidity of disciplinary inquiry. This Court therefore considers it appropriate that costs in an amount of Rs.500/-(rupees five hundred only) be imposed on the 1st respondent for a negligent drafting of the charge-sheet memo. The amount of Rs.500/- shall be paid by the 1st respondent to the A.P. State Legal Services Authority, Hyderabad within a period of two (2) weeks.

On the substantive analyses above however, this Court finds no warrant for interference in the writ petition. The writ petition is accordingly dismissed.

GODA RAGHURAM,J

27th December, 2005

***TSNR**